

LABOR & EMPLOYMENT

>>ALERT

NEW YORK CITY LAW REQUIRING “COOPERATIVE DIALOGUE” FOR REASONABLE ACCOMMODATION REQUESTS GOES INTO EFFECT ON OCTOBER 15, 2018

As employers are aware, existing federal, state, and city laws require employers to provide reasonable accommodations for qualified individuals with disabilities. A new city law extends those requirements. [Local Law No. 59](#) amends the administrative code of the City of New York to require employers (and public accommodations) to engage in a “cooperative dialogue” with persons who are or may be entitled to reasonable accommodations. The law is effective on October 15, 2018.

The term “cooperative dialogue” means the process by which a covered entity and a person entitled to an accommodation, or who may be entitled to an accommodation under the law, engage in good faith in a written or oral dialogue concerning the person’s accommodation needs; potential accommodations that may address the person’s accommodation needs, including alternatives to a requested accommodation; and the difficulties that such potential accommodations may pose for the covered entity. This law effectively creates additional responsibilities and standards in the process of determining whether an employee needs an accommodation for a disability or other reason.

Employers must engage in a cooperative dialogue within a reasonable time period after receiving a request for an accommodation related to (1) religious needs, (2) disability, (3) pregnancy, childbirth, or a related medical condition, or (4)

THE BOTTOM LINE

New York City employers should act quickly to ensure compliance with new laws that expand employee reasonable accommodation and disability rights. At a minimum, employers should update employee handbooks to: (1) explain the procedures that eligible employees should follow when requesting reasonable accommodations; and (2) describe the cooperative dialogue process. Furthermore, employers should review the City’s legal guide and model forms and consider how these materials can be utilized to ensure an effective reasonable accommodation and cooperative dialogue process for both employees and the company.

for needs as a victim of domestic violence, sex offenses, or stalking.

Notably, the law requires employers to give the individual requesting the accommodation a final determination granting or denying the accommodation in writing. This determination must occur after engaging in cooperative dialogue.

NEW GUIDANCE

The City has also recently released a helpful guide titled [Legal Enforcement Guidance on Discrimination on the](#)

[Basis of Disability](#). In addition to discussing disability discrimination, it also includes the process for engaging in a cooperative dialogue and further outlines how employers should react when someone requests an accommodation or when an employer believes that an employee may need an accommodation.

ONGOING PROCESS

The cooperative dialogue can be made in person, in writing, by phone, or via electronic means. It is considered ongoing until (1) a

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reasonable accommodation is granted; or (2) the covered entity reasonably arrives at the conclusion that: (a) there is no accommodation available that will not cause an undue hardship to the covered entity; (b) a reasonable accommodation was identified that meets the individual's needs but the individual did not accept it and no reasonable alternative was identified during the cooperative dialogue; or (c) in the case of an employer, that no accommodation exists that will allow the employee to perform the essential requisites of the job.

FACTORS IN DETERMINING GOOD FAITH

In evaluating whether or not a covered entity has engaged in a cooperative dialogue in good faith with an individual who requests an accommodation, the City will consider various factors, including, without limitation: (1) whether the covered entity has a policy informing employees, residents, or customers how to request accommodations based on disability;

(2) whether the covered entity responded to the request in a timely manner in light of the urgency and reasonableness of the request; and (3) whether the covered entity sought to obstruct or delay the cooperative dialogue or in any way intimidate or deter the individual from requesting the accommodation.

The guidance also suggests that information on cooperative dialogue should be included in employee handbooks.

FORMS AND POLICIES

Finally, the guidance also contains various documents that employers should use for their reasonable accommodation and disability policies. These include the steps of cooperative dialogue, a sample reasonable accommodation request form, a sample grant or denial of reasonable accommodation, a sample reasonable accommodation policy, as well as other useful documents.

FOR MORE INFORMATION

Daniel A. Feinstein
Partner
212.468.4885
dfeinstein@dglaw.com

Kristopher D. Reichardt
Associate
212.468.4881
kreichardt@dglaw.com

or the D&G attorney with whom you have regular contact.

Davis & Gilbert LLP
212.468.4800
1740 Broadway, New York, NY 10019
www.dglaw.com

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